

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

COMPUWARE CORPORATION,  
a Michigan Corporation,

Case No. 04-73749

Plaintiff/  
Counterclaim Defendant,

District Judge Anna Diggs Taylor

Magistrate Judge R. Steven Whalen

v.

OPNET TECHNOLOGIES, INC.,  
a Delaware Corporation,

Defendant/  
Counterclaim Plaintiff.

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**ORDER GRANTING IN PART AND DENYING IN PART  
DEFENDANT'S MOTION TO COMPEL**

Before the Court is Defendant's Motion to Compel Discovery [Docket #13], which has been referred for hearing and determination pursuant to 28 U.S.C. §636(b)(1)(A). For the reasons stated on the record on May 19, 2005, Defendant's Motion is GRANTED IN PART AND DENIED IN PART, as follows:

**Requests to Produce Documents**

1. As to Defendant's document requests 4,5,6,10,11, 12, 13, 17, 18, 19, and 31,<sup>1</sup> the motion to compel is GRANTED, and Plaintiff shall produce all requested documents in

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<sup>1</sup> The parties indicated prior to the hearing that they had resolved these document requests consistent with the language of this Order.

which there is no claim of attorney-client or work-product privilege. Plaintiff shall provide a privilege log as to any documents it asserts to be so privileged.

2. As to Defendant's document request no. 26, the motion to compel is GRANTED, and Plaintiff shall produce all documents that identify or refer to the scope of its claims, including but not limited to evaluations of validity, enforceability or infringement of the claims of each of the patents at issue, with the exception of documents protected by attorney-client or work-product privilege, for which Plaintiff will provide a privilege log.

3. As to Defendant's document requests 25, 27, 28, 29, 32 and 33, the motion to compel is GRANTED, under the same terms as set forth in ¶¶ 1 and 2, *supra*.

4. As to Defendant's document requests 39 and 40, the motion to compel is GRANTED IN PART. The Plaintiff shall produce the requested communications not on a company-wide basis, but only as to communications (1) involving the department, division, group or unit of Compuware which developed or otherwise directly worked on the allegedly infringed product, and (2) which refer to the allegedly infringed product.

### **Interrogatories**

1. Defendant's motion to compel supplemental responses as to Interrogatories 1, 5 and 9 is DENIED.

2. Defendant's motion to compel as to Interrogatories 2, 6, and 10 is GRANTED.

3. Defendant's motion to compel as to Interrogatories 3, 7 and 11 is DENIED.

4. Defendant's motion to compel as to Interrogatories 4, 8, and 12 is GRANTED.

Plaintiff shall supplement its answers to these interrogatories to the extent that it has specific

information enabling it to do so, and with the proviso that all discovery requests are continuing, and require supplementation if and when new information is acquired.

**Fees and Costs**

Defendant's request for fees and costs is DENIED.

SO ORDERED.

s/R. Steven Whalen  
R. STEVEN WHALEN  
UNITED STATES MAGISTRATE JUDGE

Dated: May 23, 2005

**CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the foregoing order was served on the attorneys and/or parties of record by electronic means or U.S. Mail on May 23, 2005.

s/Gina Wilson  
Judicial Assistant